- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

In the Matter of the Application of Questar Gas Company for Approval of a Natural Gas Processing Agreement	)))	DOCKET NO. 98-057-12 REPORT AND ORDER

ISSUED: December 3, 1999

SHORT TITLE

CO2 Processing Plant Application

SYNOPSIS

Questar Gas Company's request to include gas processing cost pursuant to a contract between the Company and an affiliate, Questar Transportation Services Company, in the 191 Gas Cost Balancing Account, is denied. Request for approval of the contract and recovery of costs must be considered either in a general rate case or an "abbreviated proceeding" as defined by the Utah Supreme Court in *Utah Dept. of Business Reg. v. Public Ser. Comm'n*, 614 P.2d 1242 (Utah 1980).

Appearances:

Jonathan M. Duke Charles E. Greenhawt Attorneys at Law	For	Questar Gas Company
Laurie Noda Assistant Attorney General	"	Division of Public Utilities
Douglas Tingey Assistant Attorney General	"	Committee of Consumer Services

By The Commission:

PROCEDURAL HISTORY

On November 25, 1998, Questar Gas Company (QGC or Company) filed an application which sought Commission approval of a gas processing contract with Questar Transportation Services Company, an unregulated subsidiary of Questar Pipeline Company. Questar Pipeline Company is an affiliate of QGC. The application also sought authorization to include the costs incurred pursuant to the contract in QGC's 191 Gas Cost Balancing account.

By Memorandum submitted December 10, 1998, the Division of Public Utilities (Division) raised concerns about the processing plant arrangement and QGC's proposal to accord 191 Account pass-through treatment to the affiliate's processing plant expenses. The Commission set the procedural schedule by Scheduling Order issued February 3, 1999. Intervening requests by the parties caused numerous modifications to the procedural schedule. The Committee of Consumer Services (Committee), the Division, and QGC filed the direct and rebuttal testimony of their witnesses. The

Committee and the Division filed a Motion for Summary Judgment in May, 1999. QGC opposed the Motion. After receipt of the parties' legal memoranda, the Commission denied the Motion for Summary Judgment without prejudice. Hearings were held June 22 and 23, 1999. Post-hearing briefs were filed in September. Final reply briefs were filed September 30, 1999.

DISCUSSION, FINDINGS, AND CONCLUSIONS

QGC asserts that the BTU content of natural gas delivered from interstate pipelines to QGC's distribution system has declined and continues to decline from a historical, relatively high BTU content gas. QGC states that this decline is due to four changes: (1) federal regulatory policies which encourage open access on pipelines, (2) increased pipeline interconnection, (3) technology which permits development of gas sources having relatively lower BTU content, and (4) processing plants which remove higher BTU hydrocarbons from gas streams for sale in markets other than the natural gas market. While the natural gas acquired by QGC and delivered through the interstate pipeline transportation system may be of sufficient BTU content for QGC's needs, the QGC gas becomes diluted by being intermixed with the natural gas, apparently of lesser BTU content, of other entities transporting gas on the interstate pipeline. Due to the declining BTU content of the gas actually delivered to QGC's distribution system, QGC has recommended that its customers set their appliances to operate with lower BTU gas. As an interim measure, QGC proposes to address the decline in BTU content of gas delivered to QGC's distribution system by placing a CO_2 removal plant (processing plant) between QGC's distribution system and the delivering pipeline. The processing plant is to be built, owned and operated by Questar Transportation Services Company. QGC and Questar Transportation Services Company have entered into a contract containing the terms and conditions by which Questar Transportation Services Company will perform CO_2 removal services and receive compensation for the services rendered. In the Application, estimated costs for the processing plant's operations are $7,500,000 to $8,500,000 per year.

The Division and the Committee essentially argue that this is a straight-forward application by QGC to obtain an increase in rates to recover expenses associated with the processing plant, through the operation of what has been called the pass-through statute, U.C.A. §54-7-12(3)(d)(i). The Division and the Committee argue that QGC's request should be denied because the rate increase is not "based upon an increased cost to the utility for fuel or energy purchased or obtained from independent contractors, other independent suppliers, or any supplier whose prices are regulated by a governmental agency . . . ." U.C.A. §54-7-12(3)(d)(i). We agree that the expenses associated with the processing plant do not fit within the language of the pass-through statute. The expenses QGC proposes to recover are not due to an increased cost for fuel or energy, do not derive from an independent contractor/supplier, and are not regulated by any governmental agency. They are not the kind of expenses the pass-through statute is intended to address.

According to QGC, the Commission is not limited to approving recovery of the processing plant expenses in pass-through proceedings or general rate cases only. QGC argues that additional means of adjusting rates to recover the processing plant expenses are available to the Commission through its general regulatory authority. "As long as the Commission is dealing with its legislatively created primary functions such as utility rate-making, it may employ a variety of means in doing so as long as certain minimum standards are met." QGC Post-hearing Brief, page 26. In support of its position, QGC cites *Utah Dept. of Business Reg. v. Public Ser. Comm'n,* 614 P.2d 1242 (Utah 1980) ("*Wage* case") and *Division of Public Utilities v. Public Ser. Comm'n,* 720 P.2d 420 (Utah 1986) (*"EBA* case").

Quoting from the *EBA* case, QGC recites that "the EBA order was promulgated under the Commission's ample general power to fix rates and establish accounting procedures." QGC Post-hearing Brief, page 25. Implicit in the argument is that this "ample general power to fix rates and establish accounting procedures" allows the Commission to permit QGC to recover the processing plant expenses as proposed.

The *EBA* case dealt with a Commission approved adjustment made to Utah Power and Light Company's Energy Balancing Account (EBA), which allowed Utah Power and Light to account for a portion of certain revenues, previously recorded in the EBA, as general revenues (to make up a shortfall in general revenues). The Court ruled that the adjustment "to tap the EBA to make up for a general revenue shortfall [violated] the proscription against retroactive rate making." *EBA* case, *supra,* at 423. The EBA had been established to account for a variety of expenses and revenues whose levels or amounts fluctuated widely and, correspondingly, were difficult to set in the context of rate making in a general rate case. The Commission had used the EBA to make periodic rate adjustments, outside of general rate cases,

to account for the varying levels of the EBA items occurring over time. In the *EBA* case, the Commission had justified the use and operation of the EBA as an implementation of the then applicable pass-through statute. The Court dismissed the Commission's argument as not supporting the adjustment approved by the Commission. The Court does note, however, that the proffered justification of the EBA, as implementing the pass-through statute, "seems farfetched." *Id.*, fn.4.

While we understand QGC is trying to use the *EBA* case to avoid the argument of the Division and the Committee, we do not give it much weight as support for approval of QGC's application. We do not dispute the Court's comment concerning our power to fix rates and to set accounting practices, but rely on the other case referenced by QGC, the *Wage* case, to establish that when we do change rates we must follow procedures which ensure rates will be just and reasonable.

QGC's position is that the *Wage* case ruling clearly allows rates to be changed outside of a general rate case. QGC's argument before the Commission in the present Docket appears to be identical to the argument that QGC (then Mountain Fuel) made before the Utah Supreme Court in the *Wage* case. "Mountain Fuel urges the Public Utilities Act does not mandate any particular type of proceeding in a rate making hearing." *Wage* case, *supra*, at 1247. The *Wage* case arose when the Commission approved a rate increase to recover an increase in wage expenses in a separate proceeding subsequent to a general rate case. The Court's opinion discusses changes in U.C.A. §54-7-12, noting that prior to amendment, no utility could increase rates in any circumstance without, essentially, having a general rate case. The Court notes that amendments, identified in the opinion, made a departure by allowing rates to be increased for fuel cost increases as well. *Id.*, at 1247, 1248. In its decision, the Court makes reference to an "abbreviated proceeding to adjust a utility rate or charge." *Id.*, at 1249, 1250. It is not clear whether the Court's use of "abbreviated proceeding" is a reference to a proceeding to deal with fuel cost changes or another proceeding (in addition to a general rate case and a fuel cost or pass-through type of proceeding).

We interpret the *Wage* case as allowing an additional proceeding to change rates, separate and apart from rate changes which occur from a general rate case or a pass-through proceeding. We do so because the Court uses the term in the context of changing rates outside of a general rate case, but for changes that are not limited solely to changes in fuel costs.[(1)]

The *Wage* case allows rate changes in an "abbreviated proceeding." But any rate change from such a proceeding must still be a just and reasonable rate. *Wage* case, *supra*, at 1250. This is the actual holding of the *Wage* case: whatever the procedure by which rates are changed, the utility still has the burden of establishing that the rates will be just and reasonable. Applying the Court's analysis to the present proceeding, we conclude that QGC has failed to support its current application to adjust rates to recover the expenses associated with the processing plant.

To be entitled to a rate adjustment, Mountain Fuel had the burden to prove the [processing plant expenses] increase constituted an extraordinary expense, e.g., disproportionate in relation to anticipated expenses and gross revenues. Whether the [processing plant expense] increase was extraordinary would depend on whether the evidence indicated there had been any adjustments in reference to productivity or efficiency gains, or whether this single expense item was offset by other factors in the company's operations, or both. The applicant should project any anticipated increase in revenues resulting from new hook-ups or increased consumption in evaluating productivity. . . . To be entitled to an adjustment for increased [processing plant] expense[s] the applicant must sustain its evidentiary burden to establish these [processing plant] increases will not be offset by productivity and increased sales.

Id., at 1249.

The evidence which the Court identifies as required in an "abbreviated proceeding," to determine whether the proposed rate change which QGC seeks in its application is just and reasonable, was not presented. We conclude that the process to determine whether a rate change proposed in an "abbreviated proceeding" is just and reasonable is functionally equivalent to the process followed in a general rate case. It requires the appropriate matching of changes that support an increase in rates with changes that support a reduction in rates. In support of its application, QGC presents evidence only with respect to the processing plant expenses. No other evidence is presented of changes "in reference to productivity or efficiency gains, or whether this single expense item was offset by other factors in the company's operations, or both." The *Wage* case states that it is QGC's burden to establish that it is entitled to rate relief in consideration of all relevant factors, not for others to prove the contrary. *Id.*, at 1245.[(2)]

We also reject QGC's application to the extent that it requests a modification of our current 191 Account pass-through proceedings into *Wage* case abbreviated proceedings by which rate changes could be made in the future. In reviewing the type of evidence which the Utah Supreme Court says is necessary to establish that rates resulting from an abbreviated proceeding are just and reasonable, we conclude that the procedural approach for an abbreviated proceeding is fundamentally at odds with the purpose of a pass-through proceeding. We have used QGC's 191 Account pass-through

proceedings to make, relatively quickly, rate changes for variances in QGC's fuel expenses (including *Wexpro* stipulation expenses) pursuant to U.C.A. §54-7-12(3)(d), Utah's pass-through statute. As noted in the *Wage* case, the purpose of pass-through proceedings is to be able to quickly implement interim rates and final rates in a very short period of time. We anticipate that if we were to convert QGC's 191 Account pass-through proceedings into abbreviated proceedings, the process to establish the necessary evidentiary support for a finding of just and reasonable rates would preclude us from complying with U.C.A. §54-7-12(3)(d)'s time requirements. We would lose the ability to use the pass-through procedure to achieve a pass-through's intended purpose.

In rejecting QGC's request to convert 191 Account pass-through proceedings into abbreviated proceedings and concluding that QGC failed to adequately support its request for rate changes to recover processing plant expenses, it is important to note what we have not determined in this Order. We do not intend, by this Order, to make any judgment on the issues of whether QGC's decision to enter into the agreement with Questar Transportation Services Company was prudent, whether the terms of the agreement are reasonable, or whether the expenses incurred under the agreement are legitimate and reasonable utility expenses that may be recovered from utility customers. Our decision not to make any rate changes is due to the failure to present Utah Supreme Court identified evidence that could be used to support a finding that the resulting rates would be just and reasonable, even assuming that the processing plant expenses are prudent and reasonable utility expenses.

While QGC presents some evidence intended to address the prudence of entering into the contract and the reasonableness of its terms, the Division and the Committee maintain that these proceedings are not a prudence review and the Commission should not address the reasonableness of the terms. The prudence and reasonableness issues are purposely not resolved by this Order.

We also note that QGC states that the expenses associated with the processing plant are recorded in Account 813, one of the accounts that make up Account 191. Because we refuse to modify 191 Account pass-through proceedings to account for processing plant expenses, we require QGC to segregate processing plant expenses so that 191 Account pass-through proceeding rate adjustments will not be affected by the entry of processing plant expenses in Account 813.

ORDER

Wherefore, based upon our consideration of the evidence submitted and argument made, we deny Questar Gas Company's Application, filed November 25, 1998.

DATED at Salt Lake City, Utah, this 3rd day of December, 1999.

/s/ Stephen F. Mecham, Chairman

/s/ Constance B. White, Commissioner

/s/Clark D. Jones, Commissioner

Attest:

/s/ Julie Orchard
Commission Secretary

1. For the purposes of our ruling in this order, we do not consider whether subsequent changes to U.C.A. §54-7-12 affect the Court's discussion in the *Wage* case on the types of proceedings by which rates may be changed.

2. QGC also must meet an additional burden because of the affiliate relation with Questar Transportation Services Company. *US West Communications. v. Utah PSC*, 901 P.2d 270 (Utah 1995).